

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.100 and §114.305; and the repeal of §§114.211 - 114.217 and 114.219.

The amendments to §114.100 and §114.305; and the repeal of §§114.211 - 114.217 and 114.219 are adopted *without changes* as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5361) and will not be republished.

Adopted revisions to §114.100 and §114.305 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP). Because of the adopted repeal of §§114.211 - 114.217 and 114.219, the TCEQ is withdrawing these rules from the EPA's consideration as a SIP revision. Additionally, it has come to the commission's attention that while §114.100 is approved as part of the SIP the section is not listed on the table titled "EPA Approved Regulations in the Texas SIP" in 40 Code of Federal Regulations (CFR) Part 52, §52.2270(c). The Oxygenated Fuels rule (previously numbered as §114.13) was originally approved by the EPA on September 12, 1994 (*Federal Register* Document No. 94-22398). The EPA most recently acknowledged §114.100 as included in the SIP in the final approval of the El Paso County Carbon Monoxide Maintenance Plan (73 FR 45162). The omission of §114.100 from 40 CFR §52.2270(c) is an oversight by the EPA.

Background and Summary of the Factual Basis for the Adopted and Repealed Rules

The current state regulations for the Voluntary Accelerated Vehicle Retirement (VAVR)

program, as specified in Chapter 114 Vehicle Scrappage Program rules, §§114.211 - 114.217 and 114.219, Subchapter F, Division 2 were adopted by the commission on April 19, 2000, at the request of stakeholders in the Dallas-Fort Worth (DFW) ozone nonattainment area as an air pollution control strategy to reduce nitrogen oxides (NO_x) and other emissions to assist in achieving attainment of the National Ambient Air Quality Standard for the 1990 one-hour ozone standard. The adopted VAVR program regulations and accompanying SIP revision were the result of a coordinated development process involving the EPA, the commission, local elected officials, citizens, industrial stakeholders, air quality researchers, and hired consultants. The SIP revision, which incorporated the VAVR program rules, was submitted to the EPA on April 28, 2000. Subsequent to the adoption of the VAVR program, the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was authorized by House Bill 2134, 77th Texas Legislature, 2001. The LIRAP provides funds to participating counties to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail an emissions test or are at least 10 years old. The LIRAP has been successfully implemented in 16 Texas counties. Due to the success of the LIRAP, the VAVR program never became a viable program in any region of the state including the DFW area that had originally requested it as an air pollution control strategy. The EPA has taken no action on the submitted SIP revision that incorporated these rules. The adopted repeal of the VAVR program removes obsolete rules that provide no current benefit to the state and are no longer necessary since the adoption and implementation of the LIRAP.

The adopted amendments make minor revisions to certain test method requirements in

§114.100 and §114.305. The current state regulations for the approved test method for the oxygen requirements for gasoline in §114.100 requires the use of American Society for Testing and Materials (ASTM) D4815. The adopted amendment to §114.100 requires regulated entities to use the most current, or "active," version of the ASTM and prevent the use of obsolete versions of this test standard. The current state regulations for the approved test method to determine compliance with the Chapter 114 Reid vapor pressure (RVP) control requirements in §114.301 as specified in §114.305 require the use of the ASTM Test Method D5191-99 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)), which is the version of the ASTM test method approved by the ASTM in 1999 but is now obsolete. The most current version of the ASTM D5191 test method was approved by the ASTM in 2013. The executive director has previously approved requests from regulated entities for minor modifications to this test method, as permitted under §114.305(b), to allow the use of the newer version of this test method for consistency with the industry's current testing practices. The adopted amendment to §114.305 requires regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. This adopted action removes the current need for the executive director to approve minor modifications to obsolete versions of this standard test method, such as the ASTM Test Method D5191-99 that is currently referenced as the approved test method.

Section by Section Discussion

To conform to TCEQ and *Texas Register* formatting requirements, non-substantive

revisions were made throughout the adopted amendments to correct citations, acronym usage, and other minor issues.

Subchapter D: Oxygen Requirements for Gasoline

§114.100, Oxygenated Fuels

The commission adopts the amendment §114.100 to replace the obsolete reference to "Texas Natural Resource Conservation Commission" and "commission" with "executive director" in subsections (b), (c), and (d), and to specify the "active version" of the ASTM Test Method D4815 referenced in subsection (e)(2) for clarity and consistency with the current rules.

Subchapter F: Vehicle Retirement and Mobile Emission Reduction Credits

Division 2: Vehicle Scrappage Program

The commission adopts the repeal of Chapter 114, Subchapter F, Division 2, §§114.211 - 114.217 and 114.219, to remove the VAVR program regulations. The VAVR program is an obsolete program that provides no current benefit to the state and is no longer considered viable since the adoption and implementation of the LIRAP.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.305, Approved Test Methods

The commission adopts the amendment to §114.305 to specify that compliance with the RVP limits in §114.301 must be determined by the active version of the ASTM Test

Method D5191 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for consistency with the current rules and to lessen obsolescence due to future revisions to the testing method.

Final Regulatory Impact Analysis Determination

The commission reviewed this adopted rulemaking in light of the Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that this adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule." A "major environmental rule" means "a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

Additionally, this adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a).

Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general

powers of the agency instead of under a specific state law. This rulemaking adopts the repeal of the VAVR program and makes minor revisions to §114.100 and §114.305. The adopted revision to §114.305 requires regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. Neither of these adopted changes exceed a standard set by federal law. In addition, these adopted changes do not exceed an express requirement of state law and are not adopted solely under the general powers of the agency, but are specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, these changes do not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of this adopted rulemaking is to repeal the VAVR program in addition to making minor changes to require regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. Nevertheless, the commission further evaluated the adopted rulemaking and performed an assessment of whether this adopted rulemaking constitutes a "taking"

under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

In addition, because the subject adopted regulations do not provide more stringent requirements, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this adopted rulemaking do not constitute a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal

management program during the public comment period. The commission received no public comment regarding the consistency with the coastal management program during the public comment period.

Effect on Sites Subject to the Federal Operating Permits Program

This adopted rulemaking does not impact facilities with air emissions that have applicable (federal or state) requirements with the Federal Operating Permit (30 TAC Chapter 122).

Public Comment

The commission offered a public hearing on August 18, 2016, but the public hearing was not formally opened for comment due to the lack of public attendance. The comment period closed on August 22, 2016. The commission received no comments on this rulemaking during the public comment period.

SUBCHAPTER D: OXYGEN REQUIREMENTS FOR GASOLINE

§114.100

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.100. Oxygenated Fuels.

(a) Beginning October 1, 1992, no person shall supply, sell, or dispense any gasoline for use as motor vehicle fuel in El Paso County during the period of October 1 through March 31 of each year, unless the gasoline has a minimum oxygen content of 2.7% by weight, except as allowed under subsection (g) of this section.

(b) No averaging, banking, or trading of oxygenate credits will be allowed until such time as a mechanism for the reporting and tracking of these credits is established by the executive director.

(c) All gasoline storage, refining, and blending facilities; gasoline terminal and bulk plants; and gasoline transporters affected by this section shall be registered with the commission and the El Paso City-County Health District. The owner or operator of each affected facility shall provide the following information to the executive director and shall update this information, as necessary, by September 1st of each year:

(1) company name, mailing address, local street address, and telephone number;

(2) name and title of the company's chief executive officer and a local contact;

(3) type of facility;

(4) commission account numbers, if applicable; and

(5) description of the affected operation.

(d) All facilities affected by this section shall maintain complete and accurate records for at least two years and shall make such records available to representatives of the executive director, United States Environmental Protection Agency (EPA), or local air pollution agency having jurisdiction in the area upon request. The information in the records shall include, but shall not be limited to, the following:

(1) for refiners/importers of oxygenated gasoline:

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer. For purposes of this rule, a batch of gasoline is considered any quantity greater than one gallon;

(B) copies of all bills of lading or transfer documents for each batch;

and

(C) documents stating whether or not shipments of gasoline to any facility in a control area for use during a control period were oxygenated or non-

oxygenated and stating oxygen content by weight of the gasoline, type of oxygenate used, and oxygenate content by volume.

(2) for blenders, gasoline terminals, and bulk plants:

(A) copies of all results of tests for oxygen content performed on batches of gasoline prior to transfer, or records of automated blending operations;

(B) copies of all documents stating the quantity and oxygen content of the gasoline received and the type of oxygenate received by the facility; and

(C) copies of all documents stating the quantity of gasoline shipped, whether gasoline shipments from the facility were oxygenated or non-oxygenated, and the type of oxygenate used.

(3) for gasoline transporters:

(A) copies of all documents stating the quantity of gasoline received by the transporter, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(4) for retailer and wholesale purchaser-consumer:

(A) copies of all documents stating the quantity of gasoline received by the facility, whether the gasoline is oxygenated or non-oxygenated, and the type of oxygenate used; and

(B) copies of all bills of lading or transfer documents for each batch.

(e) The oxygen content of gasoline at facilities affected by this section shall be determined by the following test methods:

(1) gasoline sampling methodology described in 40 Code of Federal Regulations, Part 80, Appendix D;

(2) the active version of American Society for Testing and Materials Test Method D4815 for the control periods beginning in 1992 and thereafter;

(3) EPA Oxygenate Flame Ionization Detector Test Method; or

(4) other test methods approved by EPA beginning in 1995 and thereafter.

(f) Each gasoline pump at a retail outlet from which oxygenated gasoline is dispensed shall display a legible and conspicuous label on which either the statement in

paragraph (1) or in paragraph (2) of this subsection is printed in 36-point bold type in a color contrasting with the intended background. This label shall be placed so it is clearly legible from each side of the pump from which fuel can be dispensed.

(1) A label on which the following statement is printed shall be displayed only during the period of October 1 through March 31: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(2) A label on which the following statement is printed shall be displayed during the period of October 1 through March 31 and may be displayed at any other time up to year-round: "From October 1 through March 31, the gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(g) The sale or distribution of non-oxygenated gasoline in a control area during the control period shall be allowed only under the following conditions:

(1) such gasoline is segregated from oxygenated gasoline;

(2) the documents which accompany such gasoline are clearly marked as "non-oxygenated gasoline, not for sale to ultimate consumers in a control area," and shall accompany the gasoline at all times;

(3) the product is clearly labeled as "blendstock," "export," "storage," or a similar statement to prohibit improper distribution; and

(4) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period in the control area.

SUBCHAPTER F: VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION CREDITS

§§114.211 - 114.217, 114.219

Statutory Authority

The repealed sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The repeal is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.211. Purpose.

§114.212. Enterprise Operator Responsibilities.

§114.213. Vehicle Eligibility.

§114.214. Advertising.

§114.215. State Implementation Plan (SIP) Credit for the Voluntary Accelerated Vehicle Retirement Program.

§114.216. Records, Auditing, and Enforcement.

§114.217. Credit Calculations.

§114.219. Affected Counties.

SUBCHAPTER H: LOW EMISSION FUELS

DIVISION 1: GASOLINE VOLATILITY

§114.305

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.305. Approved Test Methods.

(a) Compliance with the Reid vapor pressure (RVP) limitations of §114.301 of this title (relating to Control Requirements for Reid Vapor Pressure) must be determined by the active version of the American Society for Testing and Materials Test Method D5191 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for the measurement of RVP using the following correlation correction equation to calculate RVP equivalent to that determined by test methods prescribed in 40 Code of Federal Regulations (CFR) Part 80, Appendix E, Method 3, dated March 17, 1993.

Figure: 30 TAC §114.305(a) (No change to the figure as it currently exists in the TAC)

(b) Minor modifications to these test methods may be used, if approved by the executive director.

(c) Test methods other than those specified in subsection (a) of this section, may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this subsection, substitute "executive director" each place that Test Method 301 references "administrator."